

AN AGREEMENT made this 19<sup>th</sup> day of December 2007.

**BETWEEN:** THE GOVERNMENT OF THE REPUBLIC OF VANUATU (hereafter called "the Government") represented by the Vanuatu Maritime Authority of the first part

**AND:** VANUATU MARITIME SERVICES LIMITED a company duly incorporated under the laws of Vanuatu and having its registered office at First Floor, International Building, Kumul Highway, Port Vila, Vanuatu (hereafter called "VMS") of the second part

**AND:** EUROPEAN TRUST COMPANY LIMITED a company duly incorporated under the laws of Vanuatu and having its registered office at First Floor, International Building, Kumul Highway, Port Vila, Vanuatu (hereafter called "EUT") of the third part

**AND:** THOMAS BAYER, Chairman of EUT of 49 Tassiriki Park, Port Vila, Vanuatu (hereafter called "Mr Bayer") of the fourth part

- WHEREAS:**
1. In December 1981 the Government established a shipping register under the Maritime Act [Cap. 131], (hereafter referred to as "the Act").
  2. Pursuant to an agreement dated 24 December 1993 the Government appointed VMS to be maritime Administrator under the Act.
  3. The government intends to renew the appointment of VMS as maritime Administrator and to be its sole agent for the purposes of administering the Vanuatu International shipping Registry (hereafter referred to as "the Registry") in accordance with the Act and such Regulations as have been or may be made thereunder (together hereinafter referred to as "the Maritime Law").
  4. The Vanuatu Maritime Authority is specifically authorized under Cap 131 (Chapter Section 4) to appoint the administrator for the Vanuatu International Shipping Register.
  5. This agreement does not confer any rights or authority or create any responsibilities in respect of the marketing and promotion of the Registry.

#### IT IS HEREBY AGREED AS FOLLOWS:-

#### APPOINTMENT OF VMS AS MARITIME ADMINISTRATOR

1. The appointment of VMS as Maritime Administrator under the Act shall be renewed subject to the terms and conditions contained in this agreement and shall commence at 12:01 a.m. on 1 January 2008, (USA Eastern Standard Time).

#### VMS SOLE AGENT

2. (a) VMS is hereby appointed to be the sole agent of the Government for the purposes of administering the Registry in accordance with the Maritime Law.
- (b) The appointment of VMS as maritime Administrator does not confer any rights or authority or create any responsibilities in respect of the marketing and promotion of the Registry.

#### OPERATION OF THE REGISTRY

3. VMS hereby undertakes and agrees with the Government that it will at all times during the continuance in force of this agreement at its own cost and expense:
  - (a) maintain, staff and equip in a major city in the USA, an office and such other facilities as are necessary for the administration of the Registry;
  - (b) employ amongst its executive staff suitably qualified persons of proven experience in the shipping industry capable of the successful management of an international shipping registry.

#### APPOINTMENT OF DEPUTY COMMISSIONERS

4. (a) The Commissioner of Maritime Affairs appointed under the Maritime Law (hereafter called "the

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Commissioner" shall have absolute discretion in the appointment of Deputy Commissioners of Maritime Affairs.

- (b) Notwithstanding clause 4(a), the Commissioner shall appoint at least two Deputy Commissioners of Maritime Affairs (hereafter referred to as "Deputy Commissioners"), but the Commissioner is empowered to appoint as many Deputy Commissioners as are appropriate for the efficient running of the Registry.
- (c) VMS may recommend suitable persons to the Commissioner for appointment as Deputy Commissioners provided that it shall be responsible for the remuneration and costs of employment or appointment of any Deputy Commissioner appointed by the Commissioner pursuant to such recommendation.
- (d) Subject to clause 4(b), the Commissioner shall not, without good reason, refuse to appoint as Deputy Commissioners such persons as may be recommended for appointment by VMS.

#### REASONABLE DIRECTIONS


- 5. The Commissioner may from time to time give to VMS reasonable directions in relation to the Registry and in particular in respect to the management and operation thereof, and VMS will use all reasonable efforts to ensure that such directions are followed and implemented. In considering the reasonableness of any direction given under this clause, the cost to VMS of compliance with the direction shall be a factor.

#### COLLECTION OF FEES ON BEHALF OF THE GOVERNMENT AND TRUST ACCOUNT

- 6. (a) VMS shall, on behalf of the Government, use its best endeavours to collect and receive all fees and monies due under the Maritime Law, other than fees payable to the Government under the Maritime (Protection of Mammals) Regulation No. 33 of 1988 as amended, and shall give official receipts therefore on behalf of and on forms approved by the Government.
- (b) VMS hereby acknowledges that all monies collected and received by it in accordance with clause 6(a) belong to the Government and will be held by VMS, in their entirety, on trust for the Government.
- (c) The VMS Fees account at Citibank, New York shall continue to be the trust account of VMS. The said trust account (hereafter referred to as "the trust account") shall at all times be styled "Vanuatu Maritime Services Fees Account" and shall be used solely for the purposes of this Registry.
- (d) VMS may, with the consent of the Commissioner, change the location of and signatories to the trust account.
- (e) VMS will, as soon as practicable after receipt thereof, pay all fees and monies received by it in respect of the Registry into the trust account.
- (f) VMS will provide copies of all statements pertaining to the trust account to the Government together with the monthly statement described in Section 11.

#### PAYMENT TO GOVERNMENT

- 7. (a) All monies in the trust account representing fees and monies that have not fallen due on or before the last day of every month shall be regarded as a prepayment and shall not be taken into account for the purposes of subclause (b).
- (b) In respect of the balance of the said monies in the trust account as at the last day of each calendar month, VMS as trustee, will within two weeks of the end of that month, pay in US\$ the following sums out of the trust account to the Government or at its direction:
  - (i) all trust monies representing fees payable under Regulation 29 of the Maritime Regulations Order No 25 of 1990 or any remaking or reenactment thereof (hereafter referred to as "the MPIF monies");
  - (ii) any interest that may have been credited to the account within that month; and

4- 

receipts and other such documents sent by VMS, copies thereof, supporting its books of account and financial records.

- (e) The Commissioner may from time to time issue reasonable directives to VMS requiring it to provide the Government with reports, statements or other information relating to the books of account and financial statements kept pursuant to this clause and any such directives may specify the format of the report or statement required and supporting documentation to be supplied therewith. VMS shall use all reasonable efforts to comply with such directives.

#### **MONTHLY STATEMENTS**

- 11. (a) VMS shall furnish the Government with monthly financial statements made up to the last day of each calendar month showing the amounts invoiced and received by VMS within that month. Such statements shall be submitted within three weeks of the last day of such month.
- (b) The Commissioner may from time to time issue reasonable directives to VMS regarding the format of the financial statements and any related documents to be submitted to the Government and VMS shall use all reasonable efforts to comply with such directives.

#### **AUDIT**

- 12. (a) VMS will permit the Government to audit, or to have audited, its books of account and financial records. VMS agrees to fully cooperate with and provide all relevant records and information in its possession to the auditor appointed pursuant to this clause.
- (b) The Government shall have the right to freely discuss with such auditors as may be appointed hereunder the results of such audit and certification.
- (c) any audit carried out pursuant to this clause shall be at the cost of the Government.

#### **REGISTRY RECORDS**

- 13. (a) Notwithstanding the obligation imposed upon every Deputy Commissioner of Maritime Affairs by section 5 of the Act, VMS will keep at its principal office complete, accurate and systematic records of matters relating to its administration and operation of the Registry, including but not limited to, all documents required to be registered or retained pursuant to the Maritime Law.
- (b) All documents required to be registered or kept under the Maritime Law shall be and shall at all times remain the property of the Government.
- (c) any documents, records and information stored on any electronic, magnetic or other non paper medium, shall be capable of immediate retrieval and hard paper copies of all such documents, records and information, which, where appropriate, may be generated from the medium concerned, shall be kept in a systematically organized manner at the principal office of VMS, or elsewhere as approved by the Government.
- (d) The Commissioner may from time to time issue reasonable directives to VMS requiring it to keep records in such manner as the Government deems fit and to provide the Government with reports, returns and other information relating to the administration and operation of the Registry and any such directives may specify the format of the report or return required and any supporting documentation to be supplied therewith.

#### **INSPECTION OF RECORDS**

- 14. (a) VMS will allow any person or persons authorized by the Government, on reasonable notice being given, to inspect all or any of the books, records or documentation kept pursuant to clause 10 and 13, or to inspect the operation and administration of the Registry by VMS.
- (b) For the purposes of subclause (a), VMS will allow the Government access to its premises, wherever situate, and will facilitate any inspection and make available appropriate employees to render assistance with such inspection.

#### **PROVISION OF COMPUTER SYSTEMS TO GOVERNMENT**

- 15. With the intent that the Government should be able to duplicate in Vanuatu the computer system in place

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give full force and effect to this agreement and further its objectives and purposes.

- (b) VMS and the Government will use all reasonable efforts to maintain close communications, timely advice and consultation between themselves in all matters affecting the Registry.

#### **TERM OF AGREEMENT AND RENEWAL**

- 21. (a) Subject to clause 22 hereof, this agreement shall terminate on 31 December 2017.
- (b) If either the Government or VMS desires to renew this contract, negotiations in relation thereto shall commence not later than 1 January 2016.

#### **TERMINATION**

- 22. (a) Without prejudice to any other remedies the Government may have against VMS it shall have the right, at any time by giving written notice to VMS, to terminate this agreement forthwith in any of the following events-
  - (i) If VMS persistently breaches this agreement;
  - (ii) If VMS enters into liquidation, whether compulsorily or voluntarily (otherwise than for the purposes of reconstruction) or compounds with its creditors or takes any similar action in consequence of debt, or has a Receiver or Manager appointed over its assets or affairs;
  - (iii) If, for whatever reason, VMS is unable to perform its duties hereunder;
  - (iv) If VMS purports to assign the burden or benefit of this agreement without the prior written consent of the Government.
- (b) Without prejudice to any other remedies the Government may have against VMS, where VMS commits a serious breach of the agreement, the Government shall be entitled:
  - (i) where the breach is not capable of being remedied, to terminate this agreement forthwith; or
  - (ii) where the breach is capable of being remedied to require that the breach is so remedied within a reasonable period of time.
- (c) In the event that VMS commits a serious breach of this agreement, the Government may serve a notice upon VMS stating:
  - (i) in the event that the breach is not capable of being remedied that it is terminating the agreement forthwith or within such period of time as may be stated in the notice;
  - (ii) in the event that the breach is capable of being remedied, requiring that the breach is so remedied within a reasonable period of time, the period being stated in the notice.
- (d) If VMS fails to remedy a serious breach within a reasonable period of time after a notice is served upon it pursuant to sub clause (c)(ii), the Government may by giving written notice to VMS terminate this agreement forthwith.

#### **FORCE MAJEURE**

- 23. (a) Force Majeure shall include:
    - (i) any world event or any acts of Government which make the operation of the Registry on its then current scale impractical;
    - (ii) the banning of Vanuatu flagged ships in six or more international ports for reasons other than negligence on the part of VMS;
    - (iii) the government of Vanuatu is over thrown in a coup;
    - (iv) the invasion of Vanuatu by hostile foreign forces.
- 23

## NOTICES AND COMMUNICATIONS

27. (a) All notices, requests, reports, approvals, consents, directions and other communications (collectively referred to herein as "communications") required by, provided for or relating to this agreement shall be in writing. All communications shall be delivered:
- (i) in the case of the Government, to the office for the time being of the Commissioner;
  - (ii) in the case of VMS and EUT to their respective registered offices in Port Vila; and
  - (iii) in the case of Mr Bayer to the registered office of EUT.
- (b) Subject to subclause (c), any communication may be delivered personally, or by first class prepaid mail, which, if international, shall be airmail or by facsimile transmission.
- (c) Communications of a formal as opposed to a routine nature, such as directives, notices of intent to inspect, notices of termination and the like, shall be required to be sent by registered post with return receipt requested, or, provided that the parties agree at the time of dispatch, by facsimile transmission.
- (d) Delivery shall be deemed to have taken place -
- (i) where the communication is delivered personally, on the date and at the time of delivery;
  - (ii) where the communication is sent by registered post
    - three (3) days if local mail,
    - twenty-one (21) days if overseas mail.

## SEVERABILITY

28. If any provision of this agreement is found to be invalid, void or otherwise unenforceable, such clause shall severed from this agreement and such invalidity, voidness or unenforceability shall not affect the enforceability of any other provisions of this agreement, all of which shall be and shall continue to be valid and enforceable.

## HEADINGS

29. The headings inserted into this agreement are or the purpose of reference only and shall not affect the construction of this agreement.

## JURISDICTION

30. This agreement shall be governed, construed and interpreted solely in accordance with the laws of Vanuatu and shall be justiciable before the Supreme Court of Vanuatu, the jurisdiction of which is submitted to by all parties.

SIGNED AND SEALED by the VANUATU MARITIME  
AUTHORITY by its duly authorized representative,  
LESS JOEN NAPUATI, Commissioner,  
in the presence of:

The Common Seal of VANUATU MARITIME  
SERVICES LIMITED was hereunto affixed  
in the presence of:

Secretary

